

**IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In the Matter of:

**Keino Coley and
Selena Thompson,**

Debtors.

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Case No. 16-30780

Chapter 13

PURSUANT TO LBR 3007-1, THE COURT WILL TAKE THIS OBJECTION UNDER ADVISEMENT AND RULE, WITHOUT FURTHER NOTICE OR HEARING, UNLESS THE CLAIMANT FILES WITH THE COURT, WITH SERVICE UPON THE OBJECTING PARTY, A RESPONSE WITHIN 30 DAYS OF THE DATE OF SERVICE OF THIS OBJECTION.

**OBJECTION TO CLAIM NO. 2
OF CREDITOR INTERNAL REVENUE SERVICE**

COMES NOW the Debtors, by and through counsel, and hereby files this Objection to Claim No. 2 of Creditor Internal Revenue Service and as grounds for the Objection will state as follows:

1. Debtors filed a Chapter 13 bankruptcy on March 25, 2016. On Schedule F of the bankruptcy petition, Debtors listed "Internal Revenue Service" among the creditors holding unsecured claims against them.
2. On April 1, 2016, creditor Internal Revenue Service (the "IRS") filed a split proof of claim, which it amended on April 15, 2016. The amended claim was for \$1,841.44, of which the IRS claimed \$1,346.88 as priority. The priority portion was for the tax and pre-petition interest due for the 2010 tax year for Keino Coley.
3. No part of the IRS's amended claim is entitled to priority status. The tax for the 2010 tax year was assessed on January 13, 2014, which is more than 240 days before the filing of this case. The return for the 2010 tax year was last due on April 18, 2011, which is more than three years before the filing of this case. Furthermore, Keino Coley filed the tax return more than two years before the filing of this case.
4. In addition, Debtor Keino Coley's previous bankruptcy case does not extend the period for priority status or dischargeability of the 2010 tax debt in this case, although the previous bankruptcy case does toll the period for priority status and dischargeability. In re Evoli, 258 B.R. 839, 845 (Bankr. M.D. Fla. 2001) (holding the "priority period of § 507(a)(8) may be tolled during the pendency of a taxpayer's prior bankruptcy case, but should not be tolled by an additional six months on account of § 6503(h)."); In re Hamrick, 259 B.R. 224, 232 (following the reasoning of In re Avila, 228 B.R. 63 (Bankr. D. Mass. 1999) that § 6503 of the IRC does not extend the three year priority period of 11

U.S.C. § 507(a)(8) in a subsequent bankruptcy case); see also In re Colonial BancGroup, Inc., 2012 Bankr. LEXIS 3004, *12-13 (citing Hamrick, 259 B.R. at 229 favorably, although not for the same proposition).

5. Debtor Keino Coley was in a prior bankruptcy case (11-32509) from September 29, 2011 to July 2, 2013 (642 days). The priority period for the 2010 tax debt would have run three years from April 18, 2011 (ending April 18, 2014). However, because the debtor was in a prior bankruptcy case in which the IRS could not collect the 2010 tax debt, the priority period was tolled by 642 days. Therefore, the priority period for the 2010 tax debt for purposes of this case ended on January 20, 2016, which is two months prior to the filing of the case. Therefore, the IRS's claim is not entitled to priority status for the 2010 tax debt.

WHEREFORE, the premises considered, Debtor objects to Claim No. 2 of creditor the IRS being classified as priority in any amount and asks this Court to reclassify the entire claim as an unsecured claim.

Respectfully submitted May 20, 2016.

/s/ Joshua C. Milam
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above foregoing objection on all parties listed below by CM/ECF or by mail on May 20, 2016.

Chapter 13 Trustee, Curtis C. Reding
Bankruptcy Administrator, Teresa Jacobs
Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Honorable Dee Dee Calhoon
U.S. Attorney's Office
131 Clayton St
Montgomery, AL 36104

/s/ Joshua C. Milam
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